IN THE HIGH COURT OF JUDICATURE FOR
RAJASTHAN AT JAIPUR BENCH, JAIPUR

:: O R D E R ::

D.B. CIVIL REVIEW PETITION NO.92/2007

Tafzil Ahmed
Vs.
Rajasthan Housing Board & Ors.

D.B. CIVIL REVIEW PETITION NO.93/2007

Kailash Narayan Mathur & Anr.
Vs.
Rajasthan Housing Board & Ors.

Date of Order : 26 October, 2007.

P R E S E N T

HON'BLE THE CHIEF JUSTICE MR. J.M. PANCHAL
HON'BLE MR. JUSTICE MOHAMMAD RAFIQ

Mr.Mahendra Singh for the petitioners.

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(Per – Hon'ble Mohammad Rafiq J.)

These two review petitions have been filed with the prayer that the judgment dated 25.5.2007 whereby seven identical matters were decided, in so far as it has allowed D.B. Civil Special Appeal (W) No.689/1996 Ramesh Chand Jain & Ors. Vs. Rajasthan Housing Board, may be reviewed and

recalled and the said appeal may kindly be ordered to be dismissed with the clarification that the petitioners having been substantively appointed as Project Engineer (Junior) on May 21, 1987 and regularly promoted through DPC on November 21, 1987 cannot be treated as junior to those who were subsequently appointed.

Factual matrix of case giving rise to these review petitions is that the petitioners were appointed on ad hoc temporary basis as Project Engineer (Junior) with the condition that they shall be confirmed if their work is found satisfactory. On being adjudged suitable by the screening committee, they were made substantive in service by order of the Rajasthan Housing Board (‘the Board’, for short) on May 19, 1987. Within six months of their being made substantive, the petitioners and other similarly situated Project Engineers (Junior) who were in all eleven in number, were promoted to the post

of Project Engineer (Senior) through DPC vide order dated November 21, 1987. Twenty five Project Engineers (Junior) were appointed by way of direct recruitment on May 24, 1987. The appeal in which the judgment is prayed to be reviewed was filed by five persons who were appointed as Project Engineer (Senior) by due process of selection as direct recruits vide order dated March 27, 1989 and having completed more than five years of experience on that post, they became eligible for promotion to the post of Resident Engineer. They in the year 1996 filed the subject writ petition with the prayer that the respondent-Board be directed to correctly determine seniority of the incumbents working in the feeder cadre of Project Engineer (Senior) as per regulation 11 of the Rajasthan Housing Board Employees (Conditions of Recruitment and Promotions) Regulations, 1976 (‘the Regulations of 1976’, for short) read with

the provisions contained in Schedule Technical appended thereto, especially its clause (3)(d). The review petitioners according to them were appointed by backdoor entry and were then regularized in service on May 19, 1987. They thus became members of service thereafter and therefore, would be entitled to promotion upon completion of requisite period of experience of service of three years from that date for promotion to the post of Resident Engineer. It is evident from order of the learned Single Judge that the said writ petition was filed on the basis of the judgment rendered by a single Judge of this Court in SBCWP no.7477/1992 on July 07, 1993. The writ petition no.7477/1992 was filed by K.K. Dixit & Ors. who were Project Engineers (Junior) degree-holders challenging action of the respondent-Board. As per the relevant rules, degree-holder Project Engineers (Junior) were required to possess only three years'

of experience in service to be eligible for promotion while diploma holders needed to possess seven years' total experience of service for the purpose. K.K. Dixit & others questioned the action of the respondent-Board in seeking to count such experience of the diploma-holders who subsequently acquired degree even for period anterior to their acquiring such degree and contended that such Project Engineer (Junior) diploma-holders who were initially appointed on ad hoc temporary basis merely on the basis of stray application without advertising vacancies, inviting applications and giving opportunity to all eligible candidates to compete therefor and were subsequently regularized in service by way of screening, should not be allowed the benefit of seniority for the period they were serving merely on ad hoc basis and such period should also be not counted for the purpose of experience because they had by then not

become member of service. The learned Single Judge while accepting the aforesaid contention allowed the writ petition held that the period of service rendered by such employee on ad hoc basis cannot be taken into consideration for the purpose of experience of eligibility for promotion to the post of Project Engineer (Senior) and that only the period of service rendered by them after being screened and regularized shall be countable for the purpose. Subsequently, a review petition was filed by the original-petitioners for direction to prepare separate seniority list for degree-holders and diploma holders. The learned Single Judge allowed the review petition with the direction that separate seniority list shall be prepared and such of the Project Engineers (Junior) who acquired the qualification of AMIE shall be placed lowest in that year in the seniority list of Project Engineer (Junior) degree holders.

Appeal no.64/1993 and the appeal no.67/1993 decided by a common judgment dated May 25, 2007 were filed against the judgment dated September 21, 1993 while appeal no.528/1993 was filed against the judgment dated July 7,1993 passed in the review petition. All these appeals were admitted to hearing by division bench of this Court vide order dated October 29, 1993. Argument advanced in writ petition no.3317/1993 Fahimullah Khan vs. Rajasthan Housing Board was that experience gained by the respondents-diploma holder Project Engineer (Junior) prior to their acquiring qualification of AMIE was not countable to make them eligible for promotion. Satyaveer Singh filed writ petition no.20/1993 with the prayer that the period of service rendered by him prior be treated valid for the purpose of experience making him eligible for promotion to the post of Project Engineer (Senior) and a direction be issued to promote him from the

date persons junior to him were promoted because experience gained by him even on ad hoc basis was liable to be counted as valid experience. Writ Petition no.7063/1993 was filed by Ranjeet Singh Godara and another challenging validity of clause (3)(d) of the note below 'Schedule Technical' appended to the Regulations of 1976 which inter alia provides that the persons appointed under the process of screening shall rank junior to those appointed in accordance with the prescribed manner as per Rajasthan Housing Board Rules.

This Court while deciding all the aforesaid petitions / appeals by a common judgment dated 25.5.2007 held that the Project engineer (Junior) who have been screened and regularised would be entitled to count only such service for the purpose of experience and seniority to make them eligible for promotion which they rendered after they have been made substantive and member of

service and therefore, they would also be entitled to count the period of such service for the purpose of experience even when they were holding the diploma and acquired qualification of AMIE / degree later in point of time. Challenge to the validity of clause 3(d) given below `Schedule Technical' of the Regulations of 1976 was rejected. The judgment of which review is sought in fact decided not only the appeal in question but also other six cognate matters. Since they involved common questions of law and fact, they were ordered to be grouped together under various orders passed by different benches of this Court. It is in the context of the factual background recapitulated above that we have to appreciate the arguments advanced by Shri Mahendra Singh, the learned counsel for the petitioners.

We have heard Shri Mahendra Singh, the learned counsel for the petitioners and

perused the judgment sought to be reviewed and other material available on record.

Shri Mahendra Singh, the learned counsel for the petitioner has argued that the appellants of appeal no.689/1996 were appointed as Project Engineer (Senior) by way of direct recruitment vide order dated March 27, 1989 and were thus born two years after regular promotion granted to the petitioners as Project Engineer (Senior). The only relief which was sought in the writ petition filed by them was that the respondent-Board be directed to publish final seniority list of Project Engineer (Senior) in accordance with the rules and quota and they be declared senior to all the candidates who were appointed as Project Engineer (Junior) by screening. Besides the fact that the petitioners were not impleaded as respondents in the aforesaid writ petition, all other who were screened and regularised on the post of Project Engineer

(Junior) were also not impleaded as respondents. As a matter of fact, application filed by the review-petitioners Kailash Narayan Mathur and Sarvesh Kumar Sharma seeking their impleadment was allowed by this Court, yet the appellants did not make consequential and corresponding amendments in the cause title of the special appeal and the writ petition and thus they remained unimpleded and outside the arena of the parties. It would be evident from the order dated November 21, 1987 that 11 persons were thereby promoted as Project Engineer (Senior) but this order was wrongly described as the order of screening. This according to Shri Mahendra Singh, the learned counsel for the petitioner, is an error apparent on the face of record so as to justify review and recall of the judgment. It was further argued that one of the petitioners Tafzil Ahmed was neither impleaded nor did he file any application

for impleadment and, therefore, the judgment in question has come to him as a surprise. It was further argued that while allowing the said appeal, the respondents were directed to take steps for redeterination of seniority and to undertake the exercise for consideration of concerned persons for promotion by convening DPC/Review DPC. Now the respondent-Board has initiated action to give effect to that direction thus jeopardizing the interest of the petitioners. All the aforesaid arguments were not specifically dealt with in the judgment even though they were raised at the time of hearing and therefore, this constitutes errors apparent on the face of record and justify review and recall of the judgment. It was argued that the view taken in the judgment to the effect that experience gained prior to the screening cannot be taken into consideration has the effect of rendering the expression “total

experience of service” as redundant and otiose. As has been repeatedly held by the Hon’ble Supreme Court, the concept of “experience” is distinguishable from the concept of “seniority”. Besides, it has been the consistent practice of the Board to take into consideration the entire experience of a person on the feeder post. As a result of the aforesaid direction, the petitioners are being sought to be placed even below those who were appointed by way of direct recruitment on the post of Project Engineer (Senior) subsequent to their appointment. Learned counsel for the petitioners has relied upon the judgments of Hon’ble Supreme Court in Narendra Singh Vs. State of Haryana, 2006(8) SCC 33, Commissioner of Customs, Kolkata Vs. Peerless Constultancy Service Pvt. Ltd., 2007 (5) SCC 735, Union of India Vs. R. Bhusal 2006(6) SCC 36 B.S.N. Joshi & Sons Ltd. Vs. Nair Coal Services Ltd. 2006 (11) SCC 548, Bombay Dyeing and

Manufacturing Co. Ltd. Vs. Bombay Environmental Action Group & Ors. 2006(3) SCC 434, P.S. Sadashiv Swamy Vs. State of TN 1976(1) SLR 53, S.B. Mathur Vs. Hon'ble Chief Justice, Delhi High Court 1988 SC 2073, U.P. Jal Nigam Vs. Jaswant Singh 2006 (11) SCC 464, Government of Maharashtra Vs. Deokar Distillery 2003(5) SCC 69 and Uttaranchal Forest Rangers Association Vs. State of UP 2006(10) SCC 346.

We have given our anxious consideration to the arguments advanced by the learned counsel for the petitioners and perused the material on record.

Contention that even though this court while accepting the application of the petitioners, directed their impleadment, and yet the appellant failed to make any corresponding amendment in the cause title of the appeal and, therefore, impugned judgment should be reviewed and recalled does not deserves acceptance because by

order dated August 30, 1996, this Court had allowed two applications each by three applicants for their impleadment. One application was filed by Satish Prakash Mathur, Dinesh Chand Mathur and Om Prakash Mathur and another by Sarvesh Sharma, Jhabar Mal and Kailash Narayan Mathur. While those impleaded on the basis of first application were very much represented before the Court at the time of hearing and in fact advanced the very same arguments which the petitioners are now seeking to make, review-petitioners K.N. Mathur and Sarvesh Sharma chose not to appear before the Court. Mere non filing of the amended cause title by the appellant cannot have the effect of undoing a judicial order passed by the Court on August 20, 1996 and the review-petitioners on that basis cannot be permitted to built an argument that because of that reason they remained unimpleaded and outside the arena of parties. If they did not remain

vigilant enough to keep track of the matter and negligent in conducting the matter, this cannot become a ground to review the judgment. Argument of Tafzil Ahmed for his non-impleadment however need to be appreciated in the context of the fact that the fact that the entire controversy was examined with reference to benefit of ad hoc service for experience and seniority being extended to all those regularised by way of screening and this case was pending consideration of this court in number of petitions, of which not only the review-petitioners K.N. Mathur and Sarvesh Sharma and Jhabar Mal were aware and were permitted to be impleaded as respondents, three other similarly situated persons were also impleaded and in fact were duly represented by their advocate.

The points that were involved in the present special appeal and other cognate matters were thus interwoven and determination of

these points could not be faulted for mere reason that some of the promotees were not impleaded whereas six of them were already impleaded and the issue was even otherwise before the Court. The promotees were thus sufficiently and substantially represented.

Their Lordships of the Supreme Court in B. Prabhakar Rao and Others Vs. State of AP & others 1985(Supp.) SCC 432, dealing with the similar objection of non-joinder held that even if some of the affected parties have not been impleaded and their interest are identical with those not impleaded who are sufficiently represented, impleadment of some would satisfy the respondents and non-impleadment of some would not be fatal to the maintainability of the petition.

In V.P. Shrivastava Vs. State of M.P. (1996) 7 SCC 759 while dealing with somewhat similar objection in a petition filed at the instance of direct recruits challenging the principles for determination applied by the

State Government assigning higher seniority to ad hoc promotees, it was held that the impleadment of the State was sufficient and non-impleadment of all the promotees was not necessary particularly when the Administrative Tribunal found that impleadment of two of the promotees had safeguarded the interest of all the promotees.

In these matters, validity of clause (3)(d) of the note below Schedule Technical appended to the Regulations of 1976 was under challenge and argument for and against were made by the contesting parties on the question whether those appointed on the basis of stray applications on ad hoc basis shall be entitled to count the period of service for the purpose of experience as also seniority so as to make them eligible for promotion. In fact, in the writ petition filed by Ranjeet Singh Godara in 1993 which was one of the matters decided by the

subject common judgment, in para 11 and 12 of the reply filed by the respondents no.6 and 7 thereto, a specific contention that reference to eight persons six of whom were those impleaded as respondents by the order of this Court was made that they were now not only regularized but were promoted even before they could complete the requisite period of probation. This being the controversy pertaining to the ad hoc appointees on the post of Project Engineer (Junior) the question of their seniority and experience on that post after regularization by way of screening and encadrement as Project Engineer (Junior) was not confined to petitioners alone but concerned entire cadre and thus every member of the cadre was aware of the on going litigation before this Court. Interest of both the groups was therefore fully represented before the Court and rival submission made at the bar were

duty taken note of and appropriately dealt with.

What was decided by the common judgment of which review is sought was based on interpretation of the relevant rules contained in Regulations of 1976 and the period of experience countable for the purpose of promotion and whether clause 3(d) given below to 'Schedule Technical' of the Regulations of 1976 which provided for screening and consequential regularization of Project Engineer (Jr.) working on ad hoc / temporary basis was constitutionally valid or not. This question assumed significance in the context of the subject writ petition no.1487/1996, out of which appeal no.689/1996 arose because what was canvassed was that the petitioners herein and few others were initially appointed only on ad hoc basis and were thereafter screened and regularised in service as per the extant rules and for the purpose of promotion could

count the period of service rendered by him only in substantive capacity for the purpose of seniority as well as experience. The review-petitioners although screened and regularised on 19.5.1987 and were promoted within six months thereafter vide order dated 21.11.1997 and therefore the seniority in the feeder cadre should be correctly determined. Even if the promotion of the review-petitioners was not under-challenge, but the very benefit of period of service rendered by them on ad hoc / temporary basis for the purpose of seniority and experience on the basis of which they were treated eligible for promotion was under question and thus was under scrutiny of the Court even without the said writ petition / appeal being filed. It is the seniority and experience which made them eligible for promotion which was under scanner and not the promotion as such. The core issue that was decided in the judgment was thus whether

ad hoc / temporary Project Engineer (Jr.) upon their screening and regularization resulting into their encadrement and being made member of service, would be entitled to count the period of ad hoc service for the purpose of eligibility of promotion. There cannot be one law for determination of the seniority and counting of experience for those who have on that basis secured promotion and another for those who were not so lucky enough to get promotion till filing of these petitions / appeals, even though they were all appointed in similar fashion on stray applications, regularised by recourse of the same clause 3(d) giving rise to a common grievance raised by their fellow employees. This Court had decided the matter by merely laying down certain proposals based on interpretation of relevant rules. In order to appreciate the view point of the rival groups, Court formulated three questions and considered all the arguments,

for or against the questions. Those arguments which the review petitioners now insist they wanted make were already made by the other three Project Engineer (Jr.) who were impleaded as respondents. The petitioners, in spite of the fact that their impleadment on their application was permitted by the Court were not vigilant enough. All and every one in the cadre would thus be affected alike by the judgment whether a party or not a party, to these petitions / appeals.

Argument advanced on behalf of the petitioners is that there was delay in filing of the writ petition and while petitioners were promoted on November 21, 1987, and the writ petition itself having been filed in the year 1996 was liable to be rejected as the same suffered from delay and laches. The basic contention of the original petitioners was that they have completed five years’ experience on the post of

Project Engineer (Senior) and became eligible for promotion to the post of Resident Engineer and, therefore, they filed the writ petition with the prayer that seniority in the cadre of Project Engineer (Senior) should be correctly determined and in accordance with the rule and quota prescribed. But in addition to that the question of seniority and experience of those who had been appointed on the basis of stray application directly without being required to undergo any recruitment procedure known to law was already under examination in other cognate matters, first of which being writ petition no.7477/1992 field by K.K. Dixit and eight others way back in the year 1992. Moreover, even in the present matter the writ petition was decided by the learned Single Judge on merits and no argument with regard to delay was raised there though they were heard. This is evident from para 3 of the applications for

impleadment filed in subject appeal by S.P. Mathur, Dinesh Chand and O.P. Mathur, it has been contended that though no formal order of their imleadment as party respondents was passed in the writ petition but they were merely given a chance of hearing by the learned Single Judge.

In this scenario when this matter was considered in a group of petitions/appeals and when no objection of delay was raised before the learned Single Judge in the judgment which was impunged in appeal and the writ petition was decided on merits, the appeal having been admitted almost more than a decade ago, and was pending hearing before division bench of this Court for so long, dismissal of petitions/appeals merely on the ground of delay and laches without examining the issues involved on merits, could not have been sound exercise of judicial discretion.

Further argument has been advanced that the view taken by this Court in the impugned judgment that the experience gained cannot be considered as valid for eligibility of promotion has the effect of rendering the total experience in service as redundant and otiose. But this argument and the argument of delay are not available to be made before this Court again in the scope of review petition. There are some other arguments on merits have been made by the learned counsel for the petitioners. But such arguments can be available to review-petitioners in the scope of appeal/special leave to appeal only. It has been informed by the learned counsel in the course of hearing that special leave to petition against the said judgment has already been preferred by the petitioner in which notices have been issued, therefore, also, it may not be appropriate for this Court appreciate those very arguments again and to express

opinion on the merits of the case on those arguments, one way or the other because all those arguments in any case would be available to the petitioners to be raised in the special leave to petition.

In all those submissions which have been urged before us, the review-petitioners in fact seek to re-agitate the very same arguments which were raised before and considered and decided by, the court. Judgment in question, on the self-same grounds, cannot be re-considered all over again just because it is possible to arrive at another conclusion on that basis than the one previously reached by the court. Scope of review cannot be confused with that of an appeal. If a party is aggrieved by any judgment which in its understanding has not been correctly decided as per law or erroneously decided, such argument may be agitated in appeal before the superior court but not in a review petition.

In fact, Hon'ble Supreme Court in the case of M/s.Tungabhadra Industries Ltd. supra stated the law correctly on the subject thus:-

“(11) xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx even if the statement was wrong, it would not follow that it was an “error apparent on the face of the record”, for there is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterised as vitiated by “error apparent”. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. We do not consider that this furnishes a suitable occasion for dealing with his difference exhaustively or in any great detail, but it would suffice for us to say that where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out xxxxxxxxxxxxxxxxxxxxxxxx.”

It is settled proposition of law which has time and again been reiterated by the Supreme Court in series of judgments that an error apparent on the face of record

for requiring jurisdiction to review must be such an error which may strike one on mere looking at the record. An error which has to be established by a long drawn process of reasoning on the points where there may be possibility of two opinions can hardly be described as an error apparent on the face of record. In other words, where the alleged error is far from self evident and can be established only by lengthy and complicated arguments, such an error cannot be described as an error apparent on the face of record. And the present case, in our considered view, falls in that category.

We have respectfully considered the number of judgments cited at the bar by the learned counsel for the petitioner. In our humble opinion, however because of peculiar facts and circumstances of the instant case, the principles of law laid down therein would not be applicable to the facts of the present case.

In the circumstances, we do not find any merit in these review petitions which are accordingly dismissed.

(MOHAMMAD RAFIQ), J. **(J.M. PANCHAL), CJ.**

Skant/-